PAMELA ONG SIEW IM

v.

MAJLIS PEGUAM & 3 ORS.

HIGH COURT OF MALAYA, PENANG
TUAN VINCENT NG KIM KHOAY J
[CIVIL APPEAL NO. 18-172-92]
17 OCTOBER 1995

LEGAL PROFESSION: *Admission to the Bar - Notice of petition - Posting - Time frame for notice to remain posted on Notice Boards of the High Courts - Whether capable of being abridged - Whether Court had jurisdiction to abridge time - Legal Profession Act 1976 ss. 15(3), 15(5), 16(1) - Courts of Judicature Act 1964 ss. 4, 25(2).*

This was an application by the applicant, made on behalf of her chambering pupil, for abridgment of the time of posting the notice on the Notice Boards of the High Courts of Malaya, as required by s. 15(5) of the Legal Profession Act 1976, intimating that the petitioner had filed her petition for admission to the Malayan Bar.

By s. 15(5) of the Legal Profession Act 1976 such notice is be posted and to remain so posted for 3 months before the petitioner could be admitted to the Bar. Section 15(5), however, is silent on whether or not the time frame allocated for the posting could be abridged. Before the learned Judge the Federal Counsel argued that such silence could only mean one thing, and that is, that the Court has no inherent jurisdiction to do so. The applicant contended otherwise and cited item 8 of the Schedule to s. 25(2) of the Courts of Judicature Act 1964 as giving the Court such inherent jurisdiction.

The primary issue that arose was whether the posting period as fixed by s. 15(5) is so unambigious that it must exclude any jurisdiction on the part of the Court to abridge it.

Held:

[1] The provisions of the Courts of Judicature Act 1964 could not be used to invoke the Court's inherent jurisdiction in this case as the Court can only extend time if the Legal Profession Act itself vested such jurisdiction to the Court.

[2] Item 8 of the Schedule to s. 25(2), even when buttressed by s. 4 of the Courts of Judicature Act, is of no assistance to the applicant, as the Schedule merely sets out the scope of authority of the High Court to deal with certain matters expressly provided by the law. The proviso thereof also states that the provision should be without prejudice to any written law relating to limitation.

[3] The fact that ss. 15(3) and 16(1) of the Act give power to the Court to abridge time whereas s. 15(5) is silent is significant. The glaring contradistinction in the three provisions shows that the legislature had deliberately intended to bar the Court's exercise of inherent jurisdiction to abridge time.

[4] By s. 15(5) it is crystal clear that, not only that the said notice shall be posted but also that it shall continue to remain posted for the stipulated period of 3 months. Both the duty to give notice and the period requirement is intended to be mandatory. As this particular section is bereft of any express provision for the Court to abridge the period of posting, the Court clearly has no express or inherent powers to do so.

[Application dismissed]

Cases referred to:
Superintendent of Pudu Prison & Ors v Sim Kie Chon [1986] 1 MLJ 494 ***(cit)***
Suppuletchumi a/p Karpaya v. Palmco Bina Sdn. Bhd. [1994] 2 AMR 23 ***(cit)***
Lee Lee Cheng v Siow Peng Kwang [1958] MLJ 271 ***(foll)***
Barker v Palmer [1881] 18 QBD ***(foll)***
Joseph Au Kong Weng v. Bar Council & 3 Ors. ***(foll)***

Legislation referred to:
County Court Rules 1875 (UK), Order VIII, r. 7
Courts of Judicature Act 1964, s. 25(2)
Jadual Akta Mahkamah Kehakiman 1964, s. 25(2), 8
Legal Profession Act 1976, ss. 13(3), 15(5), (3), 16(1), 17(1), (2), 98, 99
Rules of the High Court, O. 92 r. 4
Singapore Legal Profession Act. 11(2)(a), 14(3)

Other sources referred to:
Statutory Interpretation, F.A.R. Bennion, 2 Edn., p. 29

For the applicant - Gerard Chan Weng Yew; M/s. Lim Kean Siew & Co.
For the respondent - Jeleha bt Abu Baidah; SFC

JUDGMENT

Vincent Ng Kim Khoay J:

The applicant had made this application (encl. 9) on behalf of her chambering pupil, one Lau Chow Ong (the petitioner) for abridgment of the time of posting the notice on the notice boards of all the High Courts in Malaya, as required under s. 15(5) of the Legal Profession Act 1976 (the Act) intimating that the petitioner has filed her petition for admission to the Malayan Bar; in particular, posting on the notice board of the Shah Alam High Court.

The Senior Federal Counsel objected to this application on the grounds that this Court has no inherent jurisdiction to abridge time.

To clearly and simply draw the battle lines between the parties, it may perhaps be pertinent here to first state the following factors of common ground in the application:

i) Postings on the notice boards of 14 out of 15 High Courts in West Malaysia had been duly carried out in accordance with s. 15(5) of the Act, save that in respect of the High Court at Shah Alam, as at the date of hearing of this application, the requisite notice had remained posted from 2 June 1995 i.e. for a period of over one month, which is about two months short of the three months requisite period of posting. As such, compliance with s. 15(5) of the Act had been virtually completed though not completely carried out by the applicant.

ii) The act of posting of such notice on each of the notice boards of the High Courts is effected by the various High Courts and as such the applicant would have no control over the actual carrying out of such posting.

iii) The applicant had written two letters dated 9 April 1995 and 12 April 1995 to the Senior Assistant Registrar of the High Court, Kuala Lumpur to complain that she had yet to receive the certificate of posting of the said notice.

iv) In the exercise of its sole discretion empowered by s. 13(3) of the Act, the Bar Council had exempted the petitioner from a period of 5 months pupillage.

v) For the above reasons, and in perceptive anticipation of this Court's views on the factual merits of the current application, the Senior Federal Counsel, Puan Jeleha bin Abu Baidah correctly conceded that this was a proper case in which the Court could exercise its discretion in the applicant's favour, but provided that the Court is clothed with inherent jurisdiction under the law to do so.

vi) Both the Bar Council and the Penang Bar Committee *vide* their letters dated 6 July 1995 (encl.14) and 10 July 1995 (encl.11) respectively, have stated their non-objections to this application.

As the sole justification for the very existence of a Court of Justice is essentially its function of dispensing justice at all times (nay, not even at times to dispense with justice) according to statute and case laws of the land but largely as interpreted in the light of the principles of natural justice and fair play, its inherent jurisdiction is jealously and preciously guarded. And, although the Court may only exercise its inherent jurisdiction sparingly and especially in the absence of any specific provision in the rules to meet the relief sought in order to prevent injustice or abuse of Court process, by e.g. invoking O. 92 r. 4 of the RHC. See *Superintendent of Pudu Prison & Ors v Sim Kie Chon* [1986] 1 MLJ 494 and *Suppuletchumi a/p Karpaya v. Palmco Bina Sdn. Bhd.* [1994] 2 AMR 23, such inherent jurisdiction could be ousted only when there is expressed or implied provision in the statute to this effect. Also, it is axiomatic that in order to oust the Court's inherent jurisdiction, the provision in respect of which the Court's inherent jurisdiction is sought to be invoked, has to be expressed in clear and unambiguous language; for indeed if the language in a particular provision is not clear or is ambiguous it would be necessary and incumbent upon the Court, taking the purposive approach, to carefully scrutinise the wording of the provision to glean Parliament's implied intention, so as to endow and clothe such provision with some degree of clarity and purpose.

Let us now in the current application examine the two crucial issues for the Court's determination, namely: whether the Court has inherent jurisdiction to abridge time; and if the answer is in the negative whether the provision itself is clear and unambiguous as to the required period of time that the notice must remain posted.

Section 15(5) of the Legal Profession Act reads as follows:

> The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for 3 months before the petitioner is admitted and enrolled as an advocate and solicitor.

The Senior Federal Counsel argued that the words "shall in s. 15(5) connotes a mandatory and not directory provision, and the Court may abridge time only as expressly provided in s. 15(3) and s. 16(1) of the same Act which read as follows:

> Section 15(3)
>
> Every petitioner shall, not less than 14 days before his petition is to be heard or such shorter period as the Court may allow, file an affidavit...
>
> Section 16(1)
>
> A copy each of the petition and the affidavit required to be filed under s. 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's office, and not less than ten days of such shorter period as the Court may allow.....

According to the Senior Federal Counsel, since s. 15(5) is silent about the Court's power to abridge time, the Court has no inherent jurisdiction to do so.

The applicant's Counsel Mr Gerard Chan submitted that the Court has inherent jurisdiction to abridge time. He cited item 8 of the Schedule to s. 25(2) of the Courts of Judicature Act 1964 which reads as follows:

> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made after the expiration of the time prescribed:
>
> Provided that this provision shall be without prejudice to any written law relating to limitation.

He further submits that any apparent conflict would be resolved by s. 4 of the same Act which states that "in the event of inconsistency or conflict between this Act and other written law other than the constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

The Senior Federal Counsel referred the Court to the case of *Lee Lee Cheng v Siow Peng Kwang* [1958] MLJ 271 to support her contention that the provisions of the Courts of Judicature Act could not be used to invoke the Court's inherent jurisdiction in this case as the Court can only extend time if the Act itself vested such jurisdiction in the Court. I agree.

In that case Barakbah J in dealing with item 12 of the 2nd Schedule to the Courts Ordinance 1948 of Malaya which is similar to item 8 of the Schedule to s. 25(2) of the Courts of Judicature Act stated:

> Now, what I have to decide is whether this Court has power to enlarge the time. Mr. Dharmananda, for the plaintiff, in his submission stated that this Court had power to enlarge the time and referred to item 12 in the second schedule of the Courts Ordinance, 1948. It reads as follows:
>
> > 12. Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.
> >
> > He further stated that there was no similar provision in the English Acts, and therefore was unable to produce authorities to support the contention.
> >
> > In reply, Mr. Huntsman, for the defendant submitted that item 12 was merely declaratory. It declared the Court's power to extend the time where there was express provision in the law to do it. With this view, I am inclined to agree. This item 12, in my opinion, merely sets out the jurisdiction of the High Court, namely the scope of authority to deal with certain matters expressly provided for by the law, and the Court could enlarge the time only where there was express provision in the law to that effect, as for instance, among others, the Land Acquisition Enactment (Cap.140), s. 22(3) and (4) and s. 5(1) of the Japanese judgments and Civil Proceedings Ordinance, 1946, where the law specifically provides the power of enlargement by the Court. In my view, item 12 does not give general power of enlargement to the Court.

Clearly item 8 of the schedule to s. 25(2) even when buttressed by s. 4 of the Courts of Judicature Act is of no assistance to the applicant, as it is the accepted view that the Schedule merely sets out the scope of authority of the High Court to deal with certain matters expressly provided by the law, and indeed the proviso thereof also states that the provision shall be without prejudice to any written law relating to limitation.

I am of the considered view that as s. 15(3) and s. 16(1) of the Act expressly gives power to the Court to abridge time whereas s. 15(5) is silent in this regard, such silence cannot be ignored or dismissed by the Court as to an oversight in draftsmanship; rather the glaring contradistinction in the three provisions only goes to show the legislature's deliberate intention to bar the Court's exercise of any inherent jurisdiction to abridge time. Furthermore, it is trite that time frames whenever and wherever enacted are always mandatory rather than directory, though if the relevant provision is equivocal, it is nevertheless still the duty of the Court to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed (see page 29 of "*Statutory Interpretation*" 2nd Edition by F.A.R. Bennion.

The precursor of our local cases, on the question of statutory provisions with respect to time, would appear to be the English case of *Barker v Palmer* [1881] 18 QBD. This case concerned Order VIII, r. 7 of the County Court Rules 1875 which stipulated that "the summons in an action brought to recover lands shall be delivered to the bailiff 40 clear days at least before the return day, and shall be served 35 clear days before the return day thereof." The plaintiff in that case delivered the summons to the bailiff 39 clear days, and the bailiff served it upon the defendant 38 clear days, before the return day. The County Judge ruled that the service was good, and gave judgment for the plaintiff. On appeal Grove J held:

> In construing Acts of Parliament, provisions which appear on the face of them obligatory, cannot, without strong reasons given, be held only directory. The rule is, that provisions with respect to time are always obligatory unless a power of extending the time is given to the Court, and there is no such power here.

Closer home, the question of whether time frames enacted are mandatory or directory was also considered by the High Court in originating summons no. R8-177-9-1989 in the judgment of Dato' Haji Mohd. Eusoff bin Chin J (as he then was) in the case of *Joseph Au Kong Weng v. Bar Council & 3 Ors.* This case concerned the question whether the time frames enacted by s. 98 and 99 of the Legal Profession Act are mandatory or directory. The learned Judge held:

> I think, without having to labour on the meaning of "shall", and "may", the intention of the Act is quite clear in that when it comes to disciplining an advocate and solicitor, the required actions to be taken must be done in the time frames provide for the by the Act.

The learned Judge went on to say that as long as time frames remained in the statute book, the clear intention is that the time frames are mandatory.

Counsel for the applicant further submitted that if the Court has no inherent jurisdiction to abridge the time, this would have the unjust effect of making nugatory the Bar Council's exemption of the petitioner from the period of 5 months pupillage; a *fortiori*, as the exemption was granted in the exercise of their sole discretion under s. 13(3) of the Act. In my view, this contention is untenable as the period of posting of the notice, if abridged by the Court, would affect third party rights under s. 17(1) and (2) of the Act to enter caveat against the admission of a petitioner. Thus, the mandatory procedure concerning posting of the notice and the personal rights of the petitioner in regard to the period of pupillage could not possibly have any bearing, one to the other.

It may be of interest to note that there are two sharply contrasting decisions of the High Courts in Singapore on the topic of the Court's inherent powers to enlarge or abridge time under the Singapore Legal Profession Act (Singapore LPA), namely:

(a) The case of the petition for admission of *Lee Hock Seng* (See [1972] 1 MLJ pg xxvii) in the Singapore High Court, in which the Chief Justice allowed an abridgement of the prescribed period of pupillage of the petitioner, made mandatory under s. 11(2)(a) of the Singapore Act despite arguments by the Counsel for the Law Society of Singapore that the Court had no power therein to abridge time; and

(b) In *Lam Sek Fah's* petition (Admission of Advocates and Solicitors no. 36 of 1971), which dealt with s. 14(3) of the Singapore Act (the wording being substantially similar to s. 11(2)(a) of that Act requiring posting at the Supreme Court notice board to continue for the period of six months before a petitioner is admitted as an advocate and solicitor. Therein, Tah Ah Lah J (as he then was) correctly held that:

i) The Singapore Act did not vest in the Court powers to shorten the period of notice under s. 14(3) thereof.

ii) The "inherent jurisdiction" argument can only apply if the statute itself (i.e. the Singapore Act) had vested in the Court in clear terms a discretion in the matter.

Hence, it is said that the last word on the inherent powers of the Court to abridge time under the Legal Profession Act has yet to be uttered. However, after considering the rationale in English case laws in conjunction with *Joseph Au Kong Weng* and *Lee Lee Cheng*, I am inclined to adopt the views taken by Tan Ah Tah J in *Lam Sek Fah*. The law on the question of the Court's jurisdiction to abridge or enlarge the time is thus pretty well settled in Malaysian Courts. I am sure the Bar Council and the Penang Bar Committee would have registered their objections to this application had they undertaken a proper study on the law pertaining to this issue, as the Singapore Law Society had done in *Re Petition for Admission of Lee Hock Seng*. Unfortunately, as it turned out this Court and the Attorney-General Chambers were left to delve into and to discover the prevailing law as discussed above.

I shall now turn to the second issue whether the period of posting has been clearly fixed by the Act. Section 15(5) states that "such notices shall be posted **and continue to be posted** at all High Courts for a period of 3 months before the petitioner is admitted and enrolled as an advocate and solicitor." As such, it is crystal clear, beyond peradventure, not only that the notices shall be posted but also that such notices shall continue to remain posted for the stipulated period of 3 months both the duty to give notice and the period requirement is intended to be mandatory. And, as this particular section is bereft of any express provision for the Court to abridge the period of posting, the Court clearly has no press or inherent powers to do so.

In conclusion, I find the terms in s. 15(5) to be clear and unambiguous and hold that the Court has no jurisdiction to abridge the time. Therefore dismiss this application.